

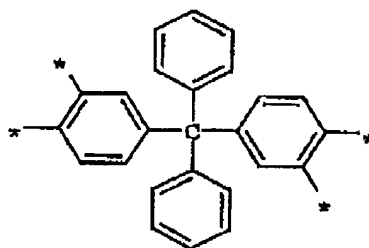
Appl. No. 10/609,453  
Amdt. Dated 6/1/2006  
Reply to Office action of 2/13/2006

In the fifth paragraph on page 2 of the Office action, the Examiner rejected claims 1-13 based on statutory double patenting in light of Sezi et al. '344.

MPEP § 804 provides guidance regarding statutory double patenting:

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist.

In this case, one possible embodiment of the instant application is where Z<sup>2</sup> is:



This embodiment is not shown in any of the claims of Sezi '344. Accordingly, an embodiment is claimed in the instant application that does not literally infringe any of the claims of Sezi '344. Accordingly, the statutory double patent rejection is improper.

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Numerous differences exist in the claims. Readily discernable differences include the following:

- $Z^3$  in the instant application differ from  $Z^2$  in Sezi et al. '344; and
- $Z^1$  and  $Z^3$  in the instant application differ from  $Z^1$  and  $Z^3$  in Sezi et al.

In view of the foregoing, reconsideration and allowance of claims 1-13 are solicited.

The Examiner cited additional "prior art". However, the Examiner should note that Lowack et al. '284 is not prior art. Lowack et al. '284 has a 102(e) date of September 30, 2002. In contrast, the instant application claims a foreign priority date of June 27, 2002. If and when necessary, Applicants will perfect priority.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be substituted.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$120.00 in accordance with Section 1.17 is enclosed herewith.

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Please charge any other fees that might be due with respect to  
Sections 1.16 and 1.17 to the Deposit Account of Lerner and  
Greenberg, P.A., No. 12-1099.

Respectfully submitted,



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